BEFORE THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

Appeal No. 19 *of* 1905-06.

Appellant—Timmegowda, son of Appugowda of Bannur village, T.-Narsipur Taluk.

Subject.

Appeal against the order of the Revenue Commissioner, declining to interfere with the order of the Deputy Commissioner of the Mysore District, affirming the order of the Jamabandi Officer fining the petitioner Rs. 2, and directing his eviction from a piece of land encroached upon by him out of the Government land reserved for Mysore-Malvalli road in the Bannur village, T.-Narsipur Taluk.

The facts of the case appear sufficiently from the following order.

Order.

The shanbhog reported that the appellant had encroached upon the margin of a road to the extent of two guntas. On the strength of this report and of a sketch prepared by the Tank Inspector, the Amildar recommended that the appellant be suitably fined and evicted. The Assistant Commissioner (Jamabandi Officer) accepted this recommendation and passed orders accordingly. In appeal both the Deputy Commissioner and the Revenue Commissioner declined to interfere. Hence this appeal.

Government hold that the procedure adopted in this case was not a sufficient compliance with Section 37 of the Revenue Regulation which requires a formal enquiry by the Deputy Commissioner before he could direct the resumption of the part encroached upon. The proceedings, being *ab initio* irregular, will be set aside and the case remanded to the Deputy Commissioner to be dealt with *de novo* in strict accordance with law.

No. R. 6805—*R. M.* 683-04-4, *dated 6th December* 1905.

Copy of the above is forwarded to the Revenue Commissioner in Mysore, together with the records received with his letter No. 1542, dated the 10th August 1905.

Appeal No. 22 of 1905-06.

Appellant	*Versus*	Respondent
Chinnasawmia		Hakeem Shabal *alias* Ali Peer.

Subject.

Appeal against the order of the Deputy Commissioner of the Mysore District, cancelling the revenue sale of land Survey No. 234 of Hebbadi village, Seringapatam Taluk.

The facts of the case appear sufficiently from the following.

Decision.

The khatedar of the land in question (No. 234) is dead. The respondent seems to be in possession of one-half of the number as a purchaser. In the other half too, he appears to have had some interest in virtue of a decree. The assessment due on the land for 1903-04, having fallen into arrears, a notice of demand was issued in the usual course. That notice was offered to the respondent though he was not legally entitled to it. He declined to pay up the assessment of one-half of the land on the ground that he had not yet become the purchaser thereof in execution of his decree. His request that only one-half of the land should be sold or that the sale should be postponed until the result of the Civil Court sale could be known, was rejected by the Amildar who directed the forfeiture and sale of the entire number if the whole of the arrear were not paid up at once. The forfeiture order and the sale proclamation were duly shown to the respondent who however made under them the same endorsement as under the demand notice. The default continuing, the land was sold on 4th August 1904, *i.e.*, five months after the service of the notice and one month after the service of the forfeiture order and sale notification, upon the respondent. The sale was confirmed by the Assistant Commissioner nearly three months afterwards, *i.e.*, on the 30th October 1904. That officer held that there were no irregularities in connection with the sale and that the respondent who had ample notice of it and opportunity of satisfying the demand as in the previous year, was not entitled to have the sale postponed or set aside. In appeal, the Deputy Commissioner saw no reason to question the correctness of the Assistant Commissioner's finding. He however, thought that the Assistant Commissioner might have waited for some time as requested by the respondent and that the case was a hard one. And on this ground he interfered and set aside the sale which had

been duly confirmed by the Assistant Commissioner. The purchaser to wit the appellant contends that the Deputy Commissioner's order is erroneous and unsustainable.

2. From the above brief statement of facts, it is abundantly clear that the circumstances of the case did not warrant the cancelment of the sale by the Deputy Commissioner either under Section 184 or under the proviso to Section 185 of the Land Revenue Regulation. There was no irregularity, mistake or fraud. Mere hardship was not a justification for the cancelment of a sale regularly conducted and properly confirmed. After all, the hardship if any was one of the respondent's own creation and he is himself responsible for it. Admittedly, he had saved the land from sale in the previous year by paying up the assessment of the whole land. He had ample notice and time to do likewise in the year in question. He had no right to ask that the land be subdivided and his half of it left alone, especially when the law prescribing the minimum did not admit of any such division. Nor was his application for an indefinite postponement of the sale pending his possible or probable purchase of the other half of the land at the Court sale, entitled to any consideration. Government hold that the sale should not have been interfered with by the Deputy Commissioner and that for the reasons stated above, this appeal must be allowed.

3. The Deputy Commissioner's order cancelling the sale is accordingly reversed, and that of the Assistant Commissioner confirming the sale is affirmed.

No. R. 6968—*R. M.* 81-05-4, *dated the 8th December* 1905.

Copy of the above is forwarded to the Deputy Commissioner, Mysore District, together with the records received with his letter No. 239, dated 26th August 1905.